

**PLANNING AND ZONING COMMISSION
MINUTES
EXECUTIVE SESSION/GENERAL MEETING
February 7, 2006**

Place: Room 119
Town Hall

TIME: 8:00 PM

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Conze, Forman, Kenny, Spain

STAFF ATTENDING: Ginsberg, Keating
RECORDER: Beler

At 8:00 P.M., Chairman Damanti read the first item:

EXECUTIVE SESSION

Commissioner David Kenny made a motion to go into Executive Session with counsel and staff to discuss pending litigation. That motion was seconded by Mr. Conze and unanimously approved. During the executive session, Attorneys J. Wayne Fox and James Murphy reviewed pending litigation with the Commission. No votes were taken and no decisions were made. At 8:40 P.M., the executive session was adjourned.

GENERAL MEETING

Mr. Damanti then read the next two agenda items together, since he believed that they are related and should be treated by the Commission in a coordinated fashion.

Discussion and deliberation only on the following five matters:

Proposed Amendment to Darien Zoning Map, Darien Library Inc., 1421 & 1445 Boston Post Road. Proposing to rezone the existing parcels from Designed Office & Research 1-acre minimum lot area (DOR-1) and Service Business (SB) to Residential-1/5 acre minimum lot area (R-1/5). The subject properties are on the north side of Boston Post Road, at the northeast corner formed by its intersection with Hecker Avenue, and is shown on Assessor's Map #39 as Lots #13 and #14 in the SB and DOR-1 Zones.

Proposed Amendments to the Darien Zoning Regulations, Darien Library Inc., 35 Leroy Avenue. Proposing to amend the Darien Zoning Regulations to create a new zoning district—a Civic Use Zone--a floating zone; and to add a definition of "Zone, Floating" to Section 210 of the Zoning Regulations.

Ms. Forman said that she likes the idea of a floating zone for municipal use that would be tighter than the proposed Civic Use zone. Mr. Kenny believed that this floating zone could be considered by some to be "spot zoning". Mr. Ginsberg noted that just because the property is small, does not necessarily mean that it is spot zoning. Mr. Spain said that there is a need to get a clear definition of floating zone, including the allowed uses and procedures. He added that a decision on rezoning to

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R-1/5 is not necessary if the Commission believes that a floating zone is appropriate for this site. Mr. Kenny said that he has a problem rezoning the front of the property along the Boston Post Road from SB to R-1/5, despite the cemetery which is across Hecker Avenue and is in the R-1/3 Zone. He is inclined to use the floating zone to remedy nuances.

Mr. Conze said that the definitions should be “tweaked”, and the Commission should adopt some form of floating zone, possibly renaming it to “Municipal Use” Zone to better reflect the objectives. Mr. Kenny said that they should approve the floating zone, but not the rezoning to R-1/5. Mr. Ginsberg noted that the floating zone would supersede any underlying zone. Mr. Damanti stated that the change to R-1/5 would not be necessary if the floating zone were granted. Mr. Spain believed that municipal uses are those which serve a traditional public purpose or those uses which were owned and operated by the Town and/or the Board of Education. Mr. Damanti believed that it would be better to list such uses, which include Town Hall, the public schools, the library, fire stations, police station, Post 53 and the Senior Center. Staff will draft a resolution for the Commission’s consideration next week.

Mr. Damanti then read the next agenda item:

Proposed Amendment to the Darien Zoning Map, Peter Ike/1915 Post Rd, LLC, 1909-1915 Boston Post Road. Proposing to amend the Darien Zoning Map to rezone a portion of the subject property (approximately 8,542 square feet) from Residential (R-1/3) to Neighborhood Business (NB). The subject property is located on the north side of Boston Post Road approximately 145 feet west of its intersection with Dickinson Road, and is shown on Assessor’s Map #42 as Lot #5, in the NB and R-1/3 Zones.

Mr. Ginsberg updated the Commission by noting that Mr. Ike is working on correcting all of the violations on the premises. Mr. Ginsberg said that the Commission needs to make a specific finding regarding the Flaherty Plumbing and Heating business now operating on-site. Mr. Ginsberg noted that none of the neighbors wished to have this property rezoned. He added that any future change of use within the Neighborhood Business (NB) zone requires an application to the Planning and Zoning Commission. Thus, the Commission has the ability to control all uses on the front of the property. He said that the application can be withdrawn or denied. However, the Commission must be clear on the record regarding the use of the residential portion of the property in the rear; the Flaherty Plumbing and Heating use; and the residential use in the front of the property within the NB Zone. Staff will work on drafting some findings and possibly a draft resolution for consideration in March.

Mr. Damanti then read the next agenda item:

Special Permit Application #241, Land Filling & Regrading Application #153, Rich & Karen Coyle, 28 Briar Brae Road. Proposing to construct a 25’ x 30’ play court in the southeast corner of the property and perform related site development activities. The subject property is located on the southeast side of Briar Brae Road, approximately 1,000 feet northeast of its intersection with Hoyt Street, and is shown on Assessor’s Map #29 as Lot #33 in the R-1/2 Zone.

It was noted that the traffic study for this project had been waived, and the proposed play court would not have any lighting. Mr. Kenny said that he would prefer that the backboard be placed in

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the center of the site and the entire play court be shifted toward the west, more in the center of the Coyle property. Mr. Conze, Ms. Forman, Mr. Spain and Mr. Damanti believed that the application should be approved generally as submitted, as it meets all of the existing Zoning Regulations. Staff will draft a resolution for the Commission's consideration in March.

Mr. Damanti then read the next agenda item:

Flood Damage Prevention Application #232, Land Filling & Regrading Application #154, Nicholas & Stacia Branca, 14 Shipway Road. Proposing to raze existing house and construct a new single-family residence and perform related site development activities within a regulated area. The subject property is located on the north side of Shipway Road, at the northwest corner formed by its intersection with Plymouth Road, and is shown on Assessor's Map #57 as Lot #34, R-1 Zone.

Commission members confirmed that they had no significant concerns or issues with this application. In response to a question, Mr. Ginsberg noted that this property is in the R-1 Zone, not the recently adopted Noroton Bay District Zone. Staff will draft a resolution for the Commission's consideration on February 14th.

Mr. Damanti then read the next agenda item. Mr. Conze made a motion to waive the reading of all of the draft resolutions aloud, as the Commission has had an opportunity to review them over the weekend. That motion was seconded by Mr. Kenny and unanimously approved.

Discussion, deliberation and possible decision on the following three matters:

Land Filling & Regrading Application #149, Michael & Karen Kuehler, 11 Rebel Lane. Proposing to level out area between garage and house and perform related site development activities. The subject property is located on the south side of Locust Hill Road, approximately 75 feet east of its intersection with Delafield Island Road, and is shown on Assessor's Map #64 as Lot #52 in the R-1 Zone.

Ms. Forman made a motion to adopt the draft resolution as written. That motion was seconded by Mr. Kenny and unanimously approved by a vote of 5-0. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2006**

Application Number: Land Filling & Regrading Application #149

Street Address: 11 Rebel Lane.
Assessor's Map #64 Lot #52

Name and Address of	Michael & Karen Kuehler
Property Owner:	11 Rebel Lane
	Darien, CT 06820

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Activity Being Applied For: Proposing to level out area between garage and house and perform related site development activities.

Property Location: The subject property is located on the south side of Locust Hill Road, approximately 75 feet east of its intersection with Delafield Island Road.

Zone: R-1 Zone

Date of Public Hearing: January 3, 2006

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: December 22 & 29, 2005

Newspaper: Darien News-Review

Date of Action: February 7, 2006

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of
Action: February 16, 2006

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plan, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to level out area between garage and house and perform related site development activities. This an "after-the-fact" permit request. In late 2005, approximately forty cubic yards of fill was brought onto the property. No additional fill is needed to complete this project. In the application materials, the applicant notes that three white pines and a six foot high board fence will be installed.
2. At the public hearing, the applicant noted that there will be no impact on the existing septic system, and that there will be no detrimental effect on the adjacent neighbors.
3. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.

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4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #149 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling and regrading shall be in accordance with the following plan submitted to and reviewed by the Commission:
- Partial Topographic Survey #11 Rebel Lane prepared for Michael P. Kuehler, Karen N Kuehler, by William W. Seymour & Associates, scale 1"=20', dated September 20, 2005.

This Survey shows the finished grades of the project, and the location of a proposed boulder retaining wall.

- B. Due to the minor nature of the project, and the fact that the project is completed, the Planning and Zoning Commission will not require a Performance Bond. Since the filling and regrading has already been completed, the only remaining work involves the installation of the boulder retaining wall, the fence and the evergreen trees. It is expected that all of that work will be completed in the spring of 2006, and it is required that it be completed by February 7, 2007 (within one year of this approval). Upon completion of the work, the applicant shall provide written verification and photographs documenting completion of the project and compliance with the approved plans.
- C. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site of the regrading will not have any negative impacts upon the adjacent property(ies) and/or the nearby private street. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- D. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- E. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Mr. Damanti then read the next agenda item:

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Special Permit Application #78-A, Noroton Fire Department, 1873 Boston Post Road.

Proposing construct additions and alterations to the existing fire station building and to perform related site development activities. The subject property is located on the northeast corner formed by the intersection of Boston Post Road and Dickinson Road, and is shown on Assessor's Map #42 as Lot #7, in the R-1/3 Zone.

Mr. Conze made a motion to adopt the draft resolution as written. That motion was seconded by Ms. Forman and unanimously approved by a vote of 5-0. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2006**

Application Number: Special Permit Application #78-A
Noroton Fire Department

Street Address: 1873 Boston Post Road
Assessor's Map #42 Lot #7

Name and Address of Applicant and
Applicant's Representative: Neil Hauck, AIA
Neil Hauck Architects
859 Boston Post Road
Darien, CT 06820

Name and Address of Property Owner: Noroton Fire Department
1873 Boston Post Road
Darien, CT 06820

Activity Being Applied For: Proposing construct additions and alterations to the existing fire station building and to perform related site development activities.

Property Location: The subject property is located on the northeast corner formed by the intersection of Boston Post Road and Dickinson Road.

Zone: R-1/3

Date of Public Hearing: January 24, 2006

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices
Dates: January 12 & 19, 2006

Newspaper: Darien News-Review

Date of Action: February 7, 2006

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of
Action: February 16, 2006

Newspaper: Darien News-Review

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The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The Noroton Fire Department proposes to construct additions and alterations to the existing fire station building and to perform related site development activities.
2. This proposal received approval from the Architectural Review Board (ARB) on January 18, 2006. That approval is hereby incorporated by reference.
3. The Zoning Board of Appeals (ZBA) approved this project as part of Calendar #1-2006 on January 18, 2006. That approval is also incorporated by reference.
4. There are no plans to change the existing uses or activities on-site as part of this application.
5. The nature of the proposed use is such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
6. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
7. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Special Permit #78-A is hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the following plans submitted to and reviewed by the Commission:
- Plot Plan of Property prepared for Noroton Fire Department, #1873 Boston Post Road by Arcamone Land Surveyors, scale 1"=30', dated Feb 21, 2002 and last revised 12/14/05.
 - Noroton FD Darien CT, by Neil Hauck Architects, Floor Plans and Elevations, dated 6/30/04 and last revised 12/16/05, Sheets A1-A6.

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- B. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies.
- C. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.
- D. This permit shall be subject to the provisions of Sections 815 and 829f of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (February 6, 2007). This may be extended as per Sections 815 and 829f.

All provisions and details of the plan as approved shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records before April 8, 2006 to finalize this approval.

Mr. Damanti then read the next agenda item:

Land Filling & Regrading Application #152, Sean Shay, 3 Salem Straits. Proposing to excavate, fill, and regrade to construct swimming pool and associated terrace, septic system and driveway and perform related site development activities. The subject property is located on the north side of Salem Straits, approximately 300 feet south of its intersection with Goodwives River Road, and is shown on Assessor's Map #62 as Lot #42, R-1 Zone.

Mr. Spain made a motion to adopt the draft resolution as written. That motion was seconded by Mr. Kenny and unanimously approved by a vote of 5-0. The adopted resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
February 7, 2006**

Application Number: Land Filling & Regrading Application #152

Street Address: 3 Hawthorne Road/3 Salem Straits
Assessor's Map #62 Lot #42

Name and Address of	Sean Shay
Property Owner:	135 Leroy Avenue
	Darien, CT 06820

Activity Being Applied For: Proposing to excavate, fill, and regrade to construct swimming pool and associated terrace, septic system and driveway and perform related site development activities.

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Property Location: The subject property is located on the north side of Salem Straits, approximately 300 feet south of its intersection with Goodwives River Road.

Zone: R-1 Zone

Date of Public Hearing: January 24, 2006

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: January 12 & 19, 2006

Newspaper: Darien News-Review

Date of Action: February 7, 2006

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of
Action: February 16, 2006

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted development plan, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to excavate, fill, and regrade to construct swimming pool and associated terrace, septic system and driveway and perform related site development activities. During the public hearing, the applicant noted that there would be a net removal of 2,400+/- cubic yards of fill. An underground stormwater detention system is also being proposed as part of this application.
2. The applicant noted that public sanitary sewer is now being designed for this area, but he is looking for approval of the new septic system. This septic system plan has been approved by the Darien Health Department. The applicant noted that if public sanitary sewer is in place in the near future, he will tie into that rather than install the septic system.
3. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.

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4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #152 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling and regrading shall be in accordance with the following plan submitted to and reviewed by the Commission:
- Site Plan, Shay Homes, LLC, 3 Salem Straits, by Stearns & Wheler, LLC, scale 1"=20', dated 9/15/05.
- B. A professional engineer shall certify that the proposed grading has been achieved per the plans and that existing drainage patterns and neighboring properties are not impacted. This certification shall be submitted by September 30, 2006, or before the issuance of a Certificate of Zoning Compliance/Certificate of Occupancy, which comes first. Upon completion of the work, the applicant shall provide written verification and photographs documenting completion of the project and compliance with the approved plans.
- C. The applicant/property owner shall have the continuing obligation to make sure that storm water runoff and drainage from the site of the regrading will not have any negative impacts upon the adjacent property(ies) and/or the nearby private street. If such problems do become evident in the future, the owner of the property shall be responsible of remedying the situation at their expense and as quickly as possible.
- D. Sediment and erosion controls shall be installed to properly manage storm water runoff and to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- G. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies.
- H. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan

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within one (1) year of this action (February 6, 2007). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

Mr. Damanti then read the next agenda item:

Discussion, deliberation and possible issuance of report:

Mandatory Referral, Sewer Commission, Andrews Drive and Brushy Hill Road sanitary sewer extensions.

Mr. Conze made a motion to approve the draft report as written. That motion was seconded by Ms. Forman and approved by a vote of 5-0. The report read as follows:

**DARIEN PLANNING AND ZONING COMMISSION
C.G.S. SECTION 8-24 MANDATORY REFERRAL REPORT
SEWER COMMISSION, SANITARY SEWER EXTENSION
February 7, 2006**

Mandatory Referral, Sewer Commission, Andrews Drive and Brushy Hill Road sanitary sewer extensions.

At a general meeting on January 24, 2006, the Planning and Zoning Commission reviewed the submitted referral request dated January 17th.

The Commission, having reviewed the proposal, hereby approves said proposal and issues its report as follows:

This project is to install 2,300 +/- linear feet of low pressure sewer main to provide sewer services to 25 properties.

The Commission finds that the proposed sanitary sewer extensions are consistent with Town plans, policies and objectives, and the Town Plan of Development. The 1995 Town Plan of Development notes on page 136, that "...[sewer] extensions have been, and will continue to be allowed adjacent to sewer areas where...health concerns associated with failing septic systems exist." It also notes that consideration should be given to installing sewers in the coastal areas near Long Island Sound. As noted in the referral request from the Director of Public Works, the area was recommended to have sewers installed in the 1997 Wastewater Facilities Plan.

The Town Plan of Conservation & Development which is now in draft form and in the public hearing process on page 7-3 recommends, "Monitor the capacity of the existing sanitary sewer system with respect to approval of any future extensions, whether Sewer Commission or developer initiated. If the existing system is at capacity, no further sewer extensions should be approved." On page A7-14 of that

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Plan, it specifically notes that the Sewer Commission is considering sewer extensions to serve Andrews Drive and Brushy Hill Road, and that the Sewer Commission should establish a formal policy on approving sewer extensions.

Determination regarding:

Amendment of Special Permit #189, Little Thai Kitchen, 4 West Avenue, CBD Zone.

Request to establish a Thai restaurant in the space formerly occupied by Katzenberg Café, Moonstruck Chocolate, and Coffee Tree.

Mr. Ginsberg noted that Department staff has reviewed the subject request and determined that it will not need any variances from the Zoning Board of Appeals. Mr. Kenny said that a restaurant in this location generally makes sense, but the Commission should give the neighbors the benefit of a public hearing to see if they have any concerns. Mr. Conze suggested that the applicant get “sign-offs” from all of the adjacent neighbors—both owners and tenants. If those “sign-offs” cannot be obtained, the Commission will hold a public hearing on the request. Mr. Conze said that staff should send the applicant a formal letter approving the project if the “sign-offs” are obtained. Mr. Damanti agreed with the other Commission members that the general concept of such a restaurant in this location is good.

Request for Extension:

Fairfield County Bank, 714-728 Boston Post Road.

Request for two year extension to implement the project.

Mr. Kenny made a motion to approve the two year extension as requested. That motion was seconded by Ms. Forman and unanimously approved. Mr. Ginsberg will send a letter to the attorney representing the applicant noting that this request had been granted.

There being no other business, the meeting was adjourned at 9:40 P.M.

Respectfully submitted,

Jeremy B. Ginsberg
Planning & Zoning Director

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